IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3356 OF 2002

Shri Hemant Chandrakant Kulkarni)
Adult, Occup.: Service)
R/o. 1155/1, Savarkar Chowk)
Opp. Parvati Sadan At & Post Malegaon)
Camp, District Nasik.).. PETITIONER

VERSUS

1) Sou.Shubhangi Mohiniraj Sulavani)
Adult, Occup.: Service)
R/o L Type Quarters, Ravalgaon)
Taluka Malegaon, Dist.: Nasik.)

2) Shri Suryabhan Tukaram Ahire)
Adult, Occup.: Service)
R/o. M Type Quarters, Room No.34)
Ravalgaon, Taluka Malegaon)
Dist.: Nasik.)

3) Shri Nago Kada Ahire)
Adult, Occup.: Service)
R/o. Vadner Road, Behind)
Grampanchayat Water Tank, Ravalgaon)
Taluka Malegaon, Dist.: Nasik)

4) Shri Vikas Jibhau Sonawane)
Adult, Occup.: Service)
R/o New Aurters, Ravalgaon)
Taluka Malegaon, Dist.: Nasik.)

5) Sou. Alka Ashok Aakhade)
Adult, Occup.: Service)
R/o. M Type Quarters, Ravalgaon)
Taluka Malegaon, Dist.: Nasik.)

6) Shri Prakash Dusane)
Adult, Occup.: Service)
Assistant Teacher, Ravalgaon English)
Shcool, Ravalgaon, Taluka Malegaon)
Dist.: Nasik.)

7) The Chairman/Secretary)
Ravalgaon Education Society)
having its office At & Post)
Ravalgaon, Dist.: Nasik 423 108.)

8) The Head Master)
Ravalgaon English School & Junior)
College, having its office)
At & Post Ravalgaon)
Dist.: Nasik 423 108.)

9) The Education Officer (Secondary))
Zilla Parishad, Dist.: Nasik.)

10) The Deputy Director of Education)
Gole Colony, Nasik.)

11) The Deputy Director of Education)
State of Maharashtra, Pune.)

12) The State of Maharashtra)
(Through Secretary, Education Dept.)
Mantralaya, Mumbai 32.)).. RESPONDENTS

Mr.Jagdish Reddy for Mr.P.K.Dhakephalkar for the Petitioner.

Mrs.Kumund A. Bhatia for Respondent No.6.

Mr.S.R.Nargolkar, Assistant Government Pleader, for Respondent Nos.9 to 12.

CORAM: V.G. PALSHIKAR AND SMT.NISHITA MHATRE, JJ.

DATED: 1ST FEBRUARY 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. The Petitioner’s challenge in this Petition is that without affording him a hearing the Deputy Director of Education, Nasik Region by an order dated 16th March 2002 reduced the Petitioner’s pay scale and further directed recovery from the salary of the Petitioner for the period from 1st July 1997 to 1st June 2000. The question involved in the Writ Petition is whether the Petitioner is entitled to the scale payable to Trained

Graduate Teachers or whether he should be granted a lower scale.

2. The Petitioner has acquired the B.Sc. and the B.Ed. degrees in 1990 and 1992 respectively. He as appointed as an Assistant Teacher in the school run by Respondent No.7 Society. He was paid the pay scale prescribed for B.Ed. teachers which was approved by the Education Officer. The Petitioner was then required to undergo a written and oral examination and was directed to demonstrate his teaching skills. The Institution found that there was sufficient workload and since the Petitioner had the necessary qualifications, the Petitioner was paid the B.Ed. scale with effect from 1st July 1997, after obtaining permission from the Education Officer. The Education Officer approved of this decision of the Institution. A seniority list was prepared by the Institution and there was no objection by anybody for the grant of B.Ed. scale to the Petitioner. After the 5th Pay Commission's recommendations, some teachers acquired the B.Ed. degree. Pursuant to the directions in a Writ Petition filed by some teachers, the Education Officer heard the teachers and decided on 14th June 2000 to grant them B.Ed. scales. An adverse order was passed against the Petitioner without hearing him. A Writ Petition was filed by one of the teachers impugning the order of 14th

June 2000 passed by the Education Officer. By an order of 1st August 2000, the Deputy Director of Education was directed to give a fresh hearing to all the concerned parties with regard to their grievances in respect of pay scales, seniority and other consequential benefits. The Deputy Director of Education then heard the parties afresh and by an order dated 29th December 2000 decided that the Petitioner should have been paid the D.Ed. scale and not the B.Ed. scale. A Writ Petition was filed being Writ Petition No.701 of 2001 before this Court which was disposed of on 8th January 2002 directing the Deputy Director to give a hearing again. Accordingly, several Institutions submitted details regarding payment of salary to their teachers before the Deputy Director of Education, Nasik. By an order of 16th March 2002, the Deputy Director of Education, after affording a hearing to the Institutions, directed that the Trained Graduate Teacher's pay scale which had been refused to the Petitioner earlier should be paid with effect from 1st June 2000. This decision was delivered without hearing the Petitioner. It is the grievance of the Petitioner that the Trained Graduate Teacher's pay scale should have been awarded to him from 1st July 1997 and not from 1st June 2000 as directed. Hence, this Writ Petition.

3. We have heard the learned Counsel for the

Petitioner who urges that the salary of the Petitioner should not have been refused without hearing the Petitioner. He submits that although the Institutions were heard by the Deputy Director of Education, the Petitioner, who was the party affected, was not given any hearing and, therefore, the order dated 16th March 2002 qua the Petitioner is erroneous and is required to be set aside.

4. The Deputy Education Inspector from the office of the Deputy Director of Education, Nasik Region, has filed an affidavit in these proceedings. It is averred that the pay scales which have been fixed by the order of 16th March 2002 have been fixed after taking into consideration the qualifications of the teachers, the need of the school, etc. An averment is made that since the Petitioner had been allotted 30 teaching periods for the 5th to 7th standards out of the total workload of 32 periods, his appointment was only for the 5th to 7th standards. According to the Respondents, since the Petitioner was appointed in the D.Ed. school and promoted to the B.Ed. school thereafter, his seniority was required to be fixed after taking into account the seniority of all the teachers teaching 5th to 7th standards and, therefore, the Petitioner was not entitled to the B.Ed. scale from 1st July 1997 as claimed by him.

5. It is obvious from the record before us that the Petitioner has not been afforded a hearing before reducing his pay scale to the D.Ed. scale and fixing it in B.Ed. scale only from 1st July 2000. Although, the Institutions were heard, there is nothing to show that the Petitioner, who was vitally affected by any order which would have been passed by the Deputy Director of Education, was given notice and heard by the Deputy Director. The contention of Respondent Nos.10 and 11 that the seniority of the Petitioner was required to be considered with the others in the 5th to 7th standards, does not appear to be correct as he had been granted the B.Ed. scale since 1997 after approval from the Education Department. We set aside the order of 16th March 2002 passed by the Deputy Director of Education, Nasik Region qua the Petitioner. We are, therefore, inclined to remand the matter to the Deputy Director of Education, Nasik Region to hear the Petitioner afresh and to decide the matter in accordance with law as to whether the Petitioner is entitled to the B.Ed. scale from 1st July 1997. We make it clear that the impugned order dated 16th March 2002 as regards Respondent Nos.1 to 6 is maintained.

6. Rule made absolute accordingly. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)